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PATENT APPLICATION

ATTORNEY DOCKET NO. 200309729-1

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Vincent C. Skurdal et al.

Confirmation No.: 1934

Application No.: 10/735,120

Examiner: Steven P. Sax

Filing Date: December 11, 2003

Group Art Unit: 2174

Title: Processing Systems and Methods of Controlling the Same

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on 09/22/2009.

☐ The fee for filing this Appeal Brief is \$540.00 (37 CFR 41.20).

☒ No Additional Fee Required.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐ (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

☐ 1st Month
\$130

☐ 2nd Month
\$490

☐ 3rd Month
\$1110

☐ 4th Month
\$1730

☐ The extension fee has already been filed in this application.

☒ (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$ 00. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

Respectfully submitted,

Vincent C. Skurdal et al.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Serial No. 10/735,120
Confirmation No. 1934
Filing Date 12/11/2003
Inventorship Vincent C. Skurdal et al.
Group Art Unit 2174
Examiner Pax, Steven P.
Attorney's Docket No. 200309729-1
Title: Processing Systems and Methods of Controlling Same

APPEAL BRIEF

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in response to the final rejections of the claims mailed August 6, 2009 (the "Rejection" or "final rejection") and the Notice of Non-Compliant Appeal Brief mailed March 19, 2010.

A Notice of Appeal was filed on September 22, 2009. At any time during the pendency of this application, please charge any fees required or credit any overpayment to Deposit Account 08-2025 pursuant to 37 CFR 1.25.

REAL PARTY IN INTEREST

The real party in interest is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 11445 Compaq Center Drive W., Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

RELATED APPEALS AND INTERFERENCES

There are currently no related appeals of other United States patent applications known to Appellants, Appellants' legal representative, or the assignee that will directly affect, or be directly affected by, or have a bearing on, the Board's decision. There are currently no related interferences known to Appellants, Appellants' legal representative, or the assignee which will directly affect, or be directly affected by, or have a bearing on, the Board's decision.

STATUS OF CLAIMS

Claims 1-6, 8-10, 12-22, 30, 31, 33, and 34 are pending in the application. Following the final Office Action mailed August 6, 2009, the status of the claims is as follows:

Claims 1-6, 8-10, 12-22, 30, 31 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 5,495,302 to Abruna. (hereinafter, “Abruna”).

Claims 20 and 33-34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Abruna.

Claims 7, 11, 18, 23-29, and 32 are canceled.

Claims 1-6, 8-10, 12-22, 30, 31, 33, and 34 are subject to appeal.

STATUS OF AMENDMENTS

No Amendments have been filed since the Final Office Action.

SUMMARY OF CLAIMED SUBJECT MATTER

The subject matter of the independent claims is summarized below with reference numerals and reference to the specification and drawings in accordance with 37 CFR §41.37.

Claim 1

The subject matter recited in claim 1 is directed to a method to manage a power state of a processing system. In one embodiment the method comprises sensing for a human presence in a region proximate a processing system independently of any human physical engagement of the processing system (paragraph [0017], page 4, lines 1-5) generating a status signal based on said sensing (paragraph [0019], page 4, lines 13-21), and, controlling at least one user-perceptible output of the processing system based, at least in part, on said status signal (paragraphs [0019]-[0022], page 4, line 13 – page 5, line 18), wherein said act of controlling comprises providing electrical power to the processing system when a user is detected when electrical power had previously been turned off and when no user had previously been detected (paragraphs [0019]-[0022], page 4, line 13 – page 5, line 18).

Claim 8

The subject matter recited in claim 8 is directed to a method to manage a power state of a processing system. In one embodiment the method comprises defining a region proximate a processing system and within which a user enters to use the processing system (paragraph [0019], page 4, lines 13-21), detecting a user who has entered the region (paragraphs [0019]-[0022], page 4, line 13 – page 5, line 18), and, responsive to said detecting and independent of a user physically engaging the processing system, causing an effect on a display device associated with the processing system, wherein said causing comprises turning on electrical power for the display device when the user is detected (paragraphs [0019]-[0022], page 4, line 13 – page 5, line 18).

Claim 15

The subject matter recited in claim 15 is directed to a display device. In one embodiment the display device comprises a display to present a user-perceptible image which is viewable from a region proximate the display device (display device 112, paragraph [0019], page 4, lines 13-21), a sensor to generate a signal relating to a user being present in the region (sensor(s) 136; paragraph [0017], page 4, lines 1-5), and a controller to turn on electrical power to at least a portion of the display device when a user is detected after a period when electrical power had been turned off and no user had been detected (display controller 134, paragraph [0015], page 3, lines 17-21) .

Claim 30

The subject matter recited in claim 30 is directed to a processing system. In one embodiment the processing system comprises a display device comprising a first processor to generate a visual display perceptible by a user positioned in a region proximate the display device (display device 112, paragraph [0019], page 4, lines 13-21), at least one sensor coupled to the display device sense a human presence in the region independent of the human physically engaging the processing system (sensor(s) 136; paragraph [0017], page 4, lines 1-5), wherein the at least one sensor generates a signal and wherein the visual display of the display device can be affected by is provided electrical power in response to the signal (display controller 134, paragraph [0015], page 3, lines 17-21), and a second device coupled to the display device and wherein the second device contains a second processor and wherein a processing speed of the second processor is affected by the signal (processing system 100A, paragraph [0019]-[0022], page 5, line 10 – page 6, line 16).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The final Office Action raised the following grounds of rejection:

(1) Claims 1-6, 8-10, 12-19, 21, 22, 30 and 31 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 5,495,302 to Abruna. (hereinafter, “Abruna”).

(2) Claims 20, 33 and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Abruna taken alone.

Accordingly, Appellant requests review of each of these rejections in the present appeal.

ARGUMENT

(1) Claims 1-6, 8-10, 12-19, 21, 22, 30 and 31 are not anticipated by and are patentable over

Abruna:

A. Legal Standard for Anticipation

The standard for lack of novelty, that is, for anticipation, under 35 U.S.C. §102 is one of *strict identity*. To anticipate a claim for a patent, a single prior source must contain all its essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986). Invalidity for anticipation requires that all of the elements and limitations of the claims be found within a single prior art reference. *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 USPQ2d 1001 (Fed. Cir. 1991). Every element of the claimed invention must be literally present, arranged as in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). “The *identical* invention must be shown in as complete detail as is contained in the patent claim.” MPEP §2131 (7th Ed. 1998) (citing *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). Furthermore, functional language, preambles, and language in “whereby,” “thereby,” and “adapted to” clauses cannot be disregarded. *Pac-Tec, Inc. v. Amerace Corp.*, 14 USPQ2d 1871 (Fed. Cir. 1990).

“It is by now well settled that the burden of establishing a *prima facie* case of anticipation resides with the Patent and Trademark Office.” *Ex parte Skinner*, 2 USPQ2d 1788, 1788-1789 (Bd. Pat. Int. 1986) (holding that examiner failed to establish *prima facie* case of anticipation). The examiner has “the burden of proof . . . to produce the factual basis for its rejection of an application under sections 102 or 103.” *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984) (quoting *In re Warner*, 379 F.2d 1011, 1016, 154

USPQ 173, 177 (CCPA 1967)). Only if that burden is met, does the burden of going forward shift to the applicant.

B. The Rejections Under 35 U.S.C. §102(e) Are Improper

1. Claims 1, 8, 15, and 30

Abruna cannot anticipate (or render obvious) independent claim 1 because Abruna neither discloses (nor even suggests) limitations recited in independent claim 1. Claim 1 is directed to a computer system, and recites limitations directed to

sensing for a human presence in a region proximate a processing system independently of any human physical engagement of the processing system;
generating a status signal based on said sensing; and,
controlling at least one user-perceptible output of the processing system based, at least in part, on said status signal, wherein said act of controlling comprises providing electrical power to the processing system when a user is detected when electrical power had previously been turned off and when no user had previously been detected.

The Action asserts that Abruna discloses controlling at least one user-perceptible output of the processing system based, at least in part, on said status signal, wherein said act of controlling comprises providing electrical power to the processing system when a user is detected when electrical power had previously been turned off and when no user had previously been detected, and cites column 7, lines 20-50 to support the rejection. Appellants disagree. The cited text reads as follows:

Lines 50 and 51 may comprise any one or a combination thereof of coaxial cabling or three hundred ohm transmission line. Relay 46 may or may not be of double throw form wherein the line 50, being connected to the television receiver 20 or intermediate unit, is either connected to one contact 52 or the other 54. If the double throw arrangement is employed the state wherein the relay 46 is disconnected may be used to ground line 50 or to inject a local signal which would appear on line 51. If line 50 is grounded the video signal is effectively removed and a dark screen results, provided that capacitive

coupling of the incoming radio frequencies is not employed. If a signal is injected any local pattern such as an audio-visual warning can be introduced and be caused to appear on the television receiver 20 viewing screen as well as be heard over the audio channel.

A temporal delay is required to minimize the effects of persons briefly moving in and out of range and to reduce false alarms resulting from the passage of clouds impacting the heating/cooling of objects which the sensor 14 is using as background reference. A relay having a built in timer using physical or electronic timing means, or an external timer comprising a simple resistor capacitor network, or a 555 type timer configured as a monostable multivibrator, or a digital timer of one of a multitude of architectures may be effectively employed to produce time delays in the tens of second domain required for this feature.

As to the manner of usage and operation of the present invention, the same should be apparent from the above description. Accordingly, no further discussion relating to the manner of usage and operation will be provided.

With respect to the above description then, it is to be realized that the optimum dimensional relationships for the parts of the invention, to include variations in size, materials, shape, form, function and manner of operation, assembly and use, are deemed readily apparent and obvious to one skilled in the art, and all equivalent relationships to those illustrated in the drawings and described in the specification are intended to be encompassed by the present invention.

Contrary to the assertion in the Action, nothing in this text discloses (nor even suggests) controlling at least one user-perceptible output of the processing system based, at least in part, on said status signal, wherein said act of controlling comprises providing electrical power to the processing system when a user is detected when electrical power had previously been turned off and when no user had previously been detected, as recited in claim 1. To the contrary, the device described in Abruna can function only to cut power to an electrical device, i.e., a television, in response to a human presence, as clearly described in column 6, lines 16-52 of Abruna:

The base of transistor 42 interconnects the output of sensor 14. Sensor 14 comprises a passive infrared detector having one or more zones in which the presence of a human body is detected by comparing the temperature of the

body with that of the background. If a warm body occupies a solid angular space indicative of human presence within an unsafe distance as preset in the detector, the sensor 14 provides a lesser signal to the base of transistor 42, thereby causing the electronic current to flow from the emitter to the collector of transistor 42 and causing the timer 58 to initiate counting toward preestablished settings. When counting is completed and the lesser signal remains at the base of the transistor, the timer will open contact 53 from contact 48, thus interrupting the incoming UHF/VHF signal to the television receiver 20. In order for the UHF/VHF signal to be reestablished to the television receiver, the warm body present in the space must be removed.

Current flow through transistor 42 must of necessity pass through the energizing coil 45 of relay 46 in the presence of a significantly high voltage at the base of transistor 42 to maintain the contacts of relay 46 in a closed state. When sensor 14 removes the signal from the base of transistor 42 when detecting a person within the detection range transistor 42 ceases conduction and the relay is de-energized thereby changing the state of contact 48 and contact 53 and opening the circuit from incoming UHF/VHF to the television receiver 20. When the warm body is removed beyond the hazardous range sensor 14 transmits a significant signal to the base of transistor 42 thereby preventing current from flowing through transistor 42 and causing the timer 58 to initiate counting toward preestablished settings. When counting is completed and the significant signal remains at the base of the transistor, the timer will close contact 53 to contact 48, thus allowing the incoming UHF/VHF signal to reach the television receiver 20. In order for the UHF/VHF signal be interrupted to the television receiver, a warm body must be placed in the space.

Thus, Abruna neither discloses nor suggests a device that provides electrical power to the processing system when a user is detected when electrical power had previously been turned off and when no user had previously been detected, as recited in claim 1. The device disclosed in Abruna is a one-way device that can only turn off the processing system (i.e., television) in response to a human presence. Therefore, Abruna cannot anticipate (or render obvious) claim 1.

Independent claims 8, 15, and 30 were rejected on the same basis as independent claim 1. The rejection of these claims is traversed based on the same arguments applied to claim 1.

2. Claims 5, 6, 13 and 14

Dependent claim 5 recites a limitation directed to “blanking a display device associated with the processing system when the human presence is not detected.” Dependent claim 6 recites a limitation directed to “blanking a display device associated with the processing system when the human presence is not detected.” The final Action asserts that Abruna discloses these limitations, and cites column 7, lines 20-49 to support the rejection. This text is excerpted above.

Appellants disagree. As described above, the device disclosed in Abruna is a one-way device that can only turn off the processing system (i.e., television) in response to a human presence. The device disclosed in Abruna requires a human presence by the detector to turn off the television; it is incapable of turning off the television (or doing anything else) when a human presence is not detected. Therefore, Abruna cannot blank a display device when a human presence is not detected, as recited in claims 5 and 6.

Dependent claims 13 and 14 were rejected on the same basis as claims 5 and 6. The rejection of these claims is traversed based on the same arguments applied to claims 5 and 6.

3. Claims 10 and 12

Dependent claim 10 recites a limitation directed to “powering-up the display device when the user is detected.” Dependent claim 12 recites a limitation directed to “powering-up at least a portion of the processing system when the user is detected.” The final Action asserts that Abruna discloses these limitations, and cites column 7, lines 20-49 to support the rejection. This text is excerpted above.

Appellants disagree. As described above, the device disclosed in Abruna is a one-way device that can only turn off the processing system (i.e., television) in response to a human presence. The device disclosed in Abruna requires a human presence by the detector to turn off the television; it is incapable of turning off the television (or doing anything else) when a human presence is not detected. Therefore, Abruna cannot powering-up the display device when the user is detected, as recited in claims 10 and 12.

(2) Claims 20, 33 and 34 are patentable under 35 U.S.C. § 103(a) over Abruna:

These claims are patentable over Abruna for at least the same reasons given above in favor of the patentability of the independent claims from which these claims depend. Consequently, this rejection should not be sustained.

CONCLUSIONS

In view of the foregoing, it is submitted that the final rejection of the pending claims is improper and should not be sustained. Therefore, a reversal of the Rejection of August 6, 2009 is respectfully requested.

Respectfully submitted,

DATE: April 19, 2010

/Steven L. Nichols/

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Claims Appendix

1. A method to manage a power state of a processing system, comprising:
sensing for a human presence in a region proximate a processing system
independently of any human physical engagement of the processing system;
generating a status_signal based on said sensing; and,
controlling at least one user-perceptible output of the processing system based, at least
in part, on said status_signal, wherein said act of controlling comprises providing electrical
power to the processing system when a user is detected when electrical power had previously
been turned off and when no user had previously been detected.
2. The method as recited in claim 1, wherein said act of sensing comprises sensing the
region from which a user can view a visual output of the processing system.
3. The method as recited in claim 1, wherein said act of controlling comprises muting an
audio output associated with the processing system when the human presence is detected.
4. The method as recited in claim 1, wherein said act of controlling comprises blanking a
display device associated with the processing system when the human presence is detected.
5. The method as recited in claim 1, wherein said act of controlling comprises blanking a
display device associated with the processing system when the human presence is not
detected.

6. The method as recited in claim 1, wherein said act of controlling comprises blanking a display device associated with the processing system if the human presence is not detected for a period of time.

7. (Cancelled)

8. A method to manage a power state of a processing system, comprising:
defining a region proximate a processing system and within which a user enters to use the processing system;
detecting a user who has entered the region; and,
responsive to said detecting and independent of a user physically engaging the processing system, causing an effect on a display device associated with the processing system, wherein said causing comprises turning on electrical power for the display device when the user is detected.

9. The method as recited in claim 8, wherein said defining comprises defining the region from which a visual image created by the processing system can be viewed by the user.

10. The method as recited in claim 8, wherein said causing comprises powering-up the display device when the user is detected.

11. (Cancelled)

12. The method as recited in claim 8, wherein said causing comprises powering-up at least a portion of the processing system when the user is detected.

13. The method as recited in claim 8, wherein said causing comprises powering-down the display device when the user is not detected.

14. The method as recited in claim 8, wherein said causing comprises powering-down the display device when the user is not detected for a predetermined period of time.

15. A display device comprising:

a display to present a user-perceptible image which is viewable from a region proximate the display device;

a sensor to generate a signal relating to a user being present in the region; and,

a controller to turn on electrical power to at least a portion of the display device when a user is detected after a period when electrical power had been turned off and no user had been detected.

16. The display device as recited in claim 15, wherein the controller is positioned in the display device.

17. The display device as recited in claim 15, wherein the controller is positioned within a remote control device.

18. (Canceled)
19. The display device as recited in claim 15, wherein the display device comprises a digital device.
20. The display device as recited in claim 15, wherein the display device comprises a liquid crystal display.
21. The display device as recited in claim 15, wherein the display device comprises an analog device.
22. The display device as recited in claim 15, wherein the display device comprises a cathode ray tube.
- 23-29. (Cancelled)
30. A processing system comprising:
a display device comprising a first processor to generate a visual display perceptible by a user positioned in a region proximate the display device;
at least one sensor coupled to the display device sense a human presence in the region independent of the human physically engaging the processing system, wherein the at least one

sensor generates a signal and wherein the visual display of the display device can be affected by is provided electrical power in response to the signal; and

a second device coupled to the display device and wherein the second device contains a second processor and wherein a processing speed of the second processor is affected by the signal.

31. The processing system as recited in claim 30, wherein the at least one sensor is located on the display device above the visual display.

32. (Cancelled)

33. The processing system as recited in claim 30, wherein the second device comprises a tower.

34. The processing system as recited in claim 30 comprising a personal computer.

Evidence Appendix

None

Related Proceedings Appendix

None